

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CLAYTON L. BARNET, #1525970

§

VS.

§

CIVIL ACTION NO. 6:16cv1120

UTMB-CMHC, ET AL.

§

MEMORANDUM OPINION ADOPTING THE REPORT  
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Clayton Landon Barnett, a former inmate at the Skyview Unit within the Texas Department of Justice (TDCJ), proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 alleging purported violations of his constitutional rights. The complaint was referred to the United States Magistrate Judge, the Honorable John D. Love.

On January 4, 2017, Judge Love issued a Report, (Dkt. #16), recommending that Plaintiff's civil rights complaint be dismissed, without prejudice, for Plaintiff's failure to prosecute—as Plaintiff, despite being ordered to do so, neither failed paid the \$8.00 filing fee nor submitted a motion to proceed *in forma pauperis* with an appropriate data sheet. Plaintiff has filed timely objections, (Dkt. #18), opining that he submitted a request for the filing fee through TDCJ to no avail.

However, the Court need not consider whether Plaintiff's submitted objections have merit because Plaintiff has manifested his failure to prosecute his own case in a different manner. Specifically, TDCJ records indicate that Plaintiff has been released from confinement. He has not provided this Court with a new, current mailing address and has not communicated with the Court since September 2017—when his mailings showed that he was still confined at the Skyview Unit. (Dkt. #19, 20).

Generally, “litigants, including prisoners, bear the burden of filing notice of a change of address in such a way that will bring attention of the court to address change.” *See Martinez-Reyes v. United States*, 2016 WL 8740494 \*5 (S.D. Tex.—McAllen, Oct. 10, 2016) (quoting *Theede v. U.S. Dep’t of Labor*, 172 F.3d 1262, 1267 (10th Cir. 1999)). This requirement is memorialized in the Eastern District of Texas Local Rule CV-11(d): “A *pro se* litigant must provide the court with a physical address, i.e., a P.O. Box is not acceptable, and is responsible for keeping the clerk advised in writing of the current physical address.”

Furthermore, in his complaint, Plaintiff signed the declaration/notification that he was responsible to “keep the court informed” of his current mailing address and that the “failure to do so may result in the dismissal of his lawsuit.” (Dkt. #1, pg. 2). Accordingly, while Judge Love’s Report recommended a dismissal for Plaintiff’s failure to prosecute—based on his failure to pay the fee—Plaintiff has now failed to prosecute his case by failing to apprise the Court of his mailing address or current whereabouts. Consequently, Judge Love correctly recommended that Plaintiff failed to prosecute his case and, therefore, his civil rights lawsuit must be dismissed.

The Court has conducted a careful *de novo* review of record and the Magistrate Judge’s proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct. Accordingly, it is

**ORDERED** that the Report of the Magistrate Judge, (Dkt. #16), is **ADOPTED** as the opinion of the Court. Plaintiff’s objections, (Dkt. #18), are overruled. Moreover, it is

**ORDERED** that the above-styled civil action is hereby **DISMISSED** without prejudice for Plaintiff’s failure to prosecute. The statute of limitations is hereby **SUSPENDED** for a period

of ninety (90) days from the date of entry of final judgment in this case, with such suspension affecting only claims which were not barred by limitations as of August 17, 2016—the date the original underlying complaint was signed. Finally, it is

**ORDERED** that any and all motions which may be pending in this cause of action are hereby **DENIED**.

So **ORDERED** and **SIGNED February 7, 2019**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

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Ron Clark, Senior District Judge